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Misconduct by Law Professors: Why it Matters¹

Lisa G. Lerman²

Most law professors take very seriously the obligation to conduct themselves as professional role models. Most would not think of using their positions to secure sexual favors, to abuse students or staff, or of engaging in any other sort academic or professional misconduct. Nevertheless, we are regularly reminded that a small number of members of the legal academy do not share the professional standards subscribed to by the majority. Some law professors engage in misconduct in the course of representing clients; other incidents involve misconduct that is unique to the roles occupied by educators.³ Some law professors engage in a range of unseemly behavior in and out of class, throwing tantrums in class, making sexual advances to students,⁴ or engaging in financial or other professional misconduct.

The number of cases of serious misconduct may be small, but my impression, from talking with many colleagues at many other schools, is that at any given law school, there may be one faculty member, or sometimes a few faculty members, whose behavior presents a problem. One can't judge the magnitude of this problem by the number of cases that lead to prosecution, discipline, resignation, or firing, because so many of these cases never lead to any repercussions for the professor nor any remedial action for the affected students. Those that are addressed in some fashion often are handled confidentially.

To explore this problem, a starting point is to inventory some examples of

1. This brief essay is based on an outline that was distributed at a session on Law Professor Misconduct at the ABA 30th National Conference on Professional Responsibility, June 2-5, 2004, in Naples, Florida. Other participants in the session were Professor Judith McMorrow of Boston College Law School, James Grogan, Chief Disciplinary Counsel of the Attorney Registration and Disciplinary Commission in Chicago, Illinois, and Professor Robert Jarvis of Nova Southeastern School of Law. Some of the information is drawn from the authors' forthcoming textbook, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW*, to be published in the spring of 2005 by Aspen Law and Business.

2. Professor of Law and Director, Law and Public Policy Program, The Catholic University of America, Columbus School of Law.

3. Monroe H. Freedman, *The Professional Responsibility of the Law Professor: Three Neglected Questions*, 39 *VAND. L. REV.* 275, 276 (1986).

4. At the 2004 ABA National Conference on Professional Responsibility, during the session on Law Professor Misconduct for which this paper was written, one law student offered a story about one of her law professors who had made a series of sexually suggestive remarks in class. She reported that she and many other students were really upset by his behavior. Over two decades of teaching, I have talked with many other students who told distressing stories about misconduct by professors.

professional misconduct by law professors that have come to light in recent years. Then I will consider what may be the impact of such conduct and how we might best respond to it.

A wide range of misconduct by law professors has been reported. It ranges from conduct that some would characterize as trivial, like teaching the law of sexual assault using titillating hypotheticals, to conduct that is plainly criminal and/or predatory. I reviewed case law, law review articles and newspaper clippings to produce the following list of some of the varieties of misconduct by law professors that have been reported.

Sexual harassment

In the cases of law professor misconduct that have been reported by the courts or the press, sexual harassment seems by far the most common and most serious of the various problems. The range of misconduct goes from inappropriate remarks and flirtation in class to repeated unwanted sexual touching to outright sexual assault. As in other academic fields, it is not difficult for a professor or a dean to use his position of authority to obtain sexual contact with students. Because sexual misconduct appears to be relatively common, I offer a few examples.

The tactile dean

Geoffrey Peters was dean of William Mitchell College of Law in the early 1980s.⁵ Peters was disciplined and received a public reprimand based on findings that he had "repeatedly engaged in unwelcome physical contact and verbal communication of a sexual nature against four women employees, two of whom were also law students." One of the objects of Peters' unwanted attention was a law student named Nancy Peterson, who worked for Peters as a research assistant. Several times Peters came up behind her and "put his hands around her waist and squeezed it or pulled her sideways into his body. These incidents all occurred in the dean's suite at the college." Peterson tried to keep her distance and began wearing more conservative clothes, but the advances continued anyway.⁶ Peters was found to have made similar advances toward other women staff and toward another student.

In imposing a reprimand, the Minnesota Supreme Court found that Peters' conduct reflected adversely on his fitness to practice law, and that the conduct was a basis for discipline even though he was not criminally prosecuted, and even though the victims of his harassment were not clients. The court concluded that the dean's conduct was especially reprehensible because it was directed in part toward students who

can neither leave and go elsewhere to school nor risk retaliation which

5. *In re Peters*, 428 N.W.2d 375 (Minn. 1988).

6. For example, "in March 1983, while Peterson was conversing with a professor in the hallway at the college, respondent walked up to Peterson from behind, placed his hand on the back of her head, ran his fingers through her hair and down to her waist, letting his hand come to rest on the small of her back." *Id.*

might take the form of expulsion or failing grades. . . . Sexual harassment in academic settings . . . surely set a pernicious example for the school's students and faculty and reflected adversely on the integrity and honor of the profession.

The disciplinary case mentions allegations by four women, two students and two staff. In fact eleven women who said they had been harassed by Peters filed a complaint with the state's Department of Human Rights, and three of them filed suit against the university⁷ and some university officials.⁸ Peters denied the allegations, and the university did not acknowledge the harassment either, but the suit was settled in 1984 for \$300,000. Peters was forced to resign from William Mitchell in the wake of the sexual harassment scandal.⁹

The disciplinary action may have interrupted Peters' academic career, but his professional life continues. At present, Peters serves as president of an organization called Creative Direct Response. In 2004 he was honored for his work with American Charities for Reasonable Fundraising Regulation.¹⁰ The conference that honored him published his biography on the Internet, describing him, in pertinent part, as "a fundraiser, lawyer, and manager; has a J.D. degree, as well as an M.A. in social research and statistics. . . . He was a faculty member at Creighton University College of Law [and] at William and Mary. . . . In 1980, [he was] appointed as the youngest dean of a major law school in the United States."¹¹

Another fallen dean

The dean of the University of California's Boalt Hall School of Law resigned because of a complaint that he had sexually assaulted a law student. The student's lawyer reported the relevant events as follows. The lawyer said that the dean had gone out for dinner and drinks with another professor and several students after the student-run public interest auction. The dean drove the student to her apartment. Once inside, she lay down and fell asleep, having had too much to drink. Two and a half hours later, she woke suddenly, and was startled to find that the

7. The university was a defendant in part because Peters had been the dean, and in part because when the women brought their complaints to the school's trustees, "they were met with disbelief." DOUGLAS R. HEIDENREICH, WITH SATISFACTION AND HONOR 273 (1999).

8. Peters may have harassed more than eleven women. Twenty-three women attended one meeting of those potentially interested in participating in the lawsuit. Cheryl Johnson, *Victims Feel Vindicated at Last by William Mitchell Case Ruling*, STAR-TRIBUNE, Aug. 27, 1988, at B1. Peters' own lawyer characterized him as "the tactile dean." Pat Prince, *Sexual Harassment Leaves its Mark for Years*, STAR-TRIBUNE, Jan. 29, 1989, at B1. The disciplinary case resulted in a published opinion that documented the harassment, but the harassment suit was settled, so there were no formal findings.

9. In his letter of resignation, Peters said he was leaving because of "the terrible pressures on my family caused by the unceasing harassment by the press." HEIDENREICH, *supra* n. 7, at 273.

10. Creative Direct Response, CDR Announces New President, Chairman of the Board <http://www.cdr-edmi.com/articles/CDR_newpres.htm> (last visited May 16, 2004).

11. 2004 Washington Nonprofit Conference, Speaker Biographies <<http://dmany.convio.net/site/PageServer?pagename=Speakerbio&>> (last visited March 9, 2004).

dean was beside her on her bed. Even more startling was that he had partly undressed her and had his hand in her vagina. After she woke up, he left.¹² In his letter to the faculty, he admitted that there had been "a single, sexual encounter, but a) it was consensual and b) "there is no allegation that any form of sexual intercourse occurred." However, he acknowledged that his behavior had been inappropriate.¹³

In July of 2003, the Board of Regents of the University of California adopted a policy prohibiting romantic or sexual relationships between university faculty and students, if the teacher has "or should reasonably expect to have in the future" any responsibility for teaching, evaluating or supervising the student. The policy provides for disciplinary action ranging from censure to dismissal for professors who violate the policy.¹⁴

A well-compensated research assistant

A law student at Stetson University in St. Petersburg filed suit against a professor alleging that he had offered to hire her as a research assistant and to pay her \$15-25 per hour because his research assistants "do more than the standard assistant." It was alleged that the professor's behavior suggested that what he had in mind was sexual services. The suit alleged that this professor had been the subject of other harassment complaints.¹⁵

Plagiarism

Some law professors plagiarize the writing of their research assistants, representing it to be their own. Some plagiarize from case law or other published articles. Some claim credit toward tenure for work that was ghostwritten for them before they were law professors.¹⁶

For example: A student was working as a paid research assistant for a

12. Maura Dolan, Stu Silverstein and Rebecca Trounson, *Woman Sought UC Berkeley's Help Before Accusing Dean*, LOS ANGELES TIMES at A1, December 3, 2002. This incident happened in December 2000, six months after this man had become dean. Initially, the student called her mother, but it was some months before she summoned the courage to approach some faculty members for advice. Eventually she went to the Title IX office, but she didn't want to give them her full name because she was afraid of retaliation. The faculty she consulted also hesitated to take action because of fear of retaliation. During the next year and a half, there was an effort to work out a quiet resolution. The student was asked to sign an agreement promising not to talk about what happened. She eventually decided not to sign this agreement, and filed a formal complaint two days before her graduation. *Id.*

13. Stuart Silverstein, *Michelle Munn and Maura Dolan, Law Dean Quits over Accusation*, LOS ANGELES TIMES at A1, November 28, 2002.

14. Rebecca Trounson, *UC Bans Dating of Faculty, Students*, LOS ANGELES TIMES at B1, July 18, 2003.

15. William R. Levesque, *Suit Accuses Professor of Sexual Harassment*, ST. PETERSBURG TIMES, October 2, 2002.

16. See Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467 (2001); Joan E. Van Tol, *Detecting, Deterring and Punishing the Use of Fraudulent Academic Credentials: A Play in Two Acts*, 30 SANTA CLARA L. REV. 791 (1990); Bill L. Williamson, *(Ab)using Students: The Ethics of Faculty Use of a Student's Work Product*, 26 ARIZ. ST. L.J. 1029 (1994).

professor. The professor asked the student to write a legal memo. The student carefully researched and wrote a fifty-page memorandum. The professor was very appreciative, read the memo and edited it, making perhaps ten or fifteen stylistic changes. The professor then reformatted the memo and published it under his own name as a chapter of a treatise, acknowledging the "able assistance" of the research assistant in a footnote.¹⁷

Neglect of teaching responsibilities

Some law professors collect full-time teaching salaries while engaging in extensive (and lucrative) consulting or law practice.¹⁸ Others cancel far too many classes because of professional travel. Still others become chronic absentees from their own classes because of mental illness or alcohol or drug addiction. Some professors appear at the times scheduled for class but teach little because of impairment, illness or other problems.

Manipulation of grades

A few law professors use grading as a means of punishing or rewarding certain students. For example, a professor might give a good grade to a student who confers sexual favors. Another professor might abuse grading authority to reward students who share his views or to punish students who hold opposing views. Still another professor might impose a disproportionate number of failing grades on a class for irrational reasons.¹⁹

For example: One Midwestern law student reported to an ABA commission that "One professor warned that any student with feminine handwriting should change it, because he would grade those papers down. If writing looked too pretty, even if it belonged to a man, the student wouldn't score as well."²⁰

Aggressive behavior

Some law professors are reported to have had temper tantrums in class or in dealings with colleagues or staff. Some of this involves verbal aggression or gestures, but in some cases, objects have been thrown or property destroyed.

For example: A professor at Emory University School of Law was suspended from teaching for six months after an investigation by the law school of an alleged assault on a staff member. The professor was arrested and charged with simple battery after he got into an argument with the law school's

17. I reported this example in *Misattribution in Legal Scholarship*, cited above, and explained that this took place at one of the six law schools where I have served on the faculty. I learned about the situation because the student consulted me about it in confidence.

18. See Roy K. Little, *Law Professors as Lawyers: Consultants, Of Counsel, and the Ethics of Self-Flagellation*, 42 S. TEX. L. REV. 345 (2001).

19. See ABA COMMISSION ON WOMEN, *infra* n. 178; *Davis v. Goode*, 995 F. Supp. 82 (E.D.N.Y. 1998) (lawsuit by C.U.N.Y. law student alleging unfair grading practices by a professor allowed to proceed over defendants' motion for summary judgment).

20. ABA COMMISSION ON WOMEN IN THE LEGAL PROFESSION, *ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION* 18 (1996).

director of operations about construction noise. He is alleged to have become enraged, grabbed her wrists, and shouted at her. A university spokesperson declined to disclose whether the suspension was with or without pay.²¹

Criminal behavior unrelated to teaching

Some law professors engage in criminal conduct that has nothing to do with their activities as professors. If they get caught, however, their behavior becomes a public scandal within the law school, which harms the faculty, the students, and the institution.

For example: A professor at New York Law School was arrested on charges of possession of child pornography. His kiddie porn was stored on his law school computer, and was found by some technicians who were servicing the computer. The professor was a highly respected scholar of copyright law. He had been on the faculty for twenty-six years. His extensive collection of photos included many images of sexual violence against children, including "girls being raped by adults or dogs, babies being sexually assaulted, young children who were tie up and being whipped."²²

Discriminatory behavior

Some law professors are alleged to show prejudice toward women, people of color, gay and lesbian people, disabled people and others, as reflected in their failure to call on members of certain groups in class, their interruptions of or disparaging responses to comments by members of certain groups, or their comments in class that directly disparage particular groups.²³

For example: A student at a large Midwestern law school described the behavior of one of her male professors toward women students: "He would never look them in the face and he always stared at their breasts. . . . they stopped going to his office. So men, but not women, are getting their questions answered."²⁴

Some such situations are offensive or annoying, but the behavior of some professors can be very disturbing to a large group of students.

For example: One student described a professor who traumatized his class: "He was not just a tough professor trying to break in first year law students. It went beyond that. He was sexually and racially offensive. . . . He constantly referred to bestiality, G strings, and women wearing pasties Students suffered from serious psychological problems as a result of this man, as if first year law school isn't tense enough. It just killed me to see people suffering like this: there was nothing that we, men or women, could do . . .

21. Mae Gentry, *Emory Suspends King Biographer Following Arrest*, ATLANTA JOURNAL-CONSTITUTION at B1, October 23, 2002.

22. Elisabeth Franck, *The Professor and the Porn*, NEW YORK MAGAZINE at 41, June 23, 2003.

23. See generally, ABA COMMISSION ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (1996).

24. *Id.* at 15.

[because the administration would not address the issue].²⁵

Some states explicitly prohibit discriminatory conduct in their disciplinary rules.²⁶ Others interpret more general rules to prohibit such conduct. Some state ethics rules include a comment after Rule 8.4 explaining that some discrimination violates Rule 8.4(d).²⁷ Regardless of what the rules say, law students' values and behavior are much influenced by the expressed values of their professors, so the persistence of various forms of bias in the classroom is likely to be carried out of the law schools into the profession.

Dishonest behavior

Some incidents involve professors who misrepresent their credentials or activities. This can take the form of plagiarism, but can also involve resume fraud or other situations. Some law professors receive substantial sums for producing scholarship advocating a particular point of view and do not disclose in the published work that it was paid for by an interest group.²⁸

Misappropriation of law school funds or improper use of law school staff

Some incidents involve law professors who use law school funds to cover personal expenses, representing vacation travel to be business travel, or representing entertainment expenses to be for business purposes. Some law professors

25. *Id.*

26. Among the states whose ethics rules that prohibit discrimination by lawyers are California, Colorado, the District of Columbia, Florida, Illinois, Michigan, Minnesota, New Jersey, New York, Ohio, and Texas. STEPHEN GILLERS and ROY D. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS at 421-427 (Aspen Law and Bus. 2004).

27. Rule 8.4, cmt. 3. In the mid-1990s, proposals were presented to the ABA to amend the Model Rules of Professional Conduct to prohibit discrimination. One of them, proposed by the Standing Committee on Ethics and Professional Responsibility, provided in part that it would be professional misconduct for a lawyer to "knowingly manifest by words or conduct, in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status." The ABA Young Lawyers Division submitted a broader proposal that would have made it misconduct for a lawyer to "commit a discriminatory act prohibited by law or to harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation or marital status where the act of discrimination or harassment is committed in connection with a lawyer's professional activities." GILLERS & SIMON, *supra* n. 26 at 417-418. The latter proposal would have covered conduct by law professors toward law students. The former would not have done so. However, neither proposal was adopted, but the ABA House of Delegates instead passed a resolution condemning bias and prejudice by lawyers. *Id.* at 427. In 1998, two more such proposals were presented but withdrawn because the sponsors realized that they would not be adopted. However, in 1998 the House of Delegates adopted an amendment to the comments to Rule 8.4 which states that a lawyer who manifests bias or prejudice in the course of representing a client would violate Rule 8.4(d) if the conduct is prejudicial to the administration of justice. *Id.* at 419, Rule 8.4, cmt. 3.

28. See Ronald K. L. Collins, *A Letter on Scholarly Ethics*, 45 J. L.G. EDUC. 139 (1995) (urging that law professors should be more candid in disclosure of possible conflicts of interest in their scholarship); Richard B. Schmitt, *Rules May Require Law Professors to Disclose Fees*, WALL STREET JOURNAL, Jan. 31, 2000, at B1.

ask law school staff to do work on paid consulting or personal matters, or to pick up dry cleaning or to do other personal errands.

Failure to report misconduct by other lawyers

Some professors are aware of misconduct by colleagues or others that would be reportable under Rule 8.3 or its equivalent, but do not report that misconduct to the disciplinary authorities. This rule requires reporting of violations of the rules that raise questions about the honesty, trustworthiness or fitness of a lawyer to practice—regardless of whether the conduct in question occurred in or out of law practice.

Modeling greed and selfishness as professional values

Some professors make comments in class to the effect that they know all the students decided to go to law school just because they want to make money. Sometimes this is acknowledged with approval. Some professors model greed or selfish behavior by giving priority to lucrative consulting over their academic responsibilities.

Ex parte communications with judges

Sometimes judges or their clerks consult professors they know for advice on legal issues on which the professors are experts. Sometimes professors provide such advice without insisting that the communication be in writing and be shared with the parties to the matter at issue.

For example: A judge is married to a law professor. Sometimes, when the judge holds a status conference in a case, the judge's husband is present and participates in the discussion of the cases. It is said that the judge's husband helps his wife to evaluate and decide the cases before her, especially in cases that deal with areas of law in which he is expert.²⁹

Inflated recommendation of students for jobs or for bar admission

Some professors have given favorable or unqualified recommendations of students to prospective employers or to bar admissions authorities despite knowledge that particular students have evidenced dishonesty, incompetence, or some other lack of fitness to practice.

Misconduct in representation of clients

A few law professors who maintain a part-time private practice of law engage in the same sorts of unethical behavior that leads to discipline of non-academic lawyers.

For example: A law professor at American University suspended from practicing law for one year because, among other charges, he settled a potential class action suit without his clients' knowledge or approval. The principal term of the "settlement" was a payment of \$225,000 to the professor and his co-counsel by the defendant corporation. The professor also agreed not to represent other clients against this defendant, and not to disclose the settlement to his clients.³⁰

29. Lois Romano, *The Judge's In-House Counsel; Wright's Husband Offers Insight into Rulings in Paula Jones Case*, WASHINGTON POST, February 9, 1998, at A1.

30 See, e.g., *In re Hager*, 812 A.2d 904 (D.C. 2002).

Practicing law despite "inactive" bar status

Some professors change their bar membership status to "inactive" when they undertake full-time teaching, but nevertheless engage in some activities that constitute practice of law³¹

Why should we be so concerned about a fairly small number of cases of misconduct by law professors?

If the number of cases of law professor misconduct is small, one might wonder whether it is really important for law schools to develop standards and procedures to guide them in responding to those few cases that come up. One problem is that law schools, like many other academic institutions, tend to turn a blind eye to chronic troublesome behavior of one or another colleague. In part, it is because the person may be tenured and very senior. In part, the non-response may be out of a misguided sense of collegiality. And in part, the non-response may be because it is so very difficult to confront the often embarrassing and highly personal types of misconduct listed above.

It is important for law schools to consider adopting standards of conduct for law professors, and to consider what would help them to overcome the natural institutional tendency to avoid confronting difficulty. One reason is that if any one of these cases becomes public, the school may become the object of an avalanche of really nasty publicity, and become (for a time) the laughingstock of the legal academy. This is bad for the school, and bad for the profession. But there are other reasons to take the prevention and remediation of law professor misconduct seriously.

Law professors as role models

Law professors have a responsibility as those who train the next generation of lawyers to model respect for the law, respect for other people, and to behave professionally. Students may not remember what happened in *Hadley v. Baxendale*, but they will remember how their teachers treated them. They will observe their teachers' conduct and internalize that behavior as "what lawyers do."³² So, for example, an aggressive style of teacher-student interplay in class may validate students who aspire to become barracudas.

Law students are vulnerable

One assumes that people coming into law school are mature and resilient adults. In fact, they are unusually vulnerable to disrespectful or abusive behavior, perhaps in part because of some features of the law school environment. Some studies show that about one third of law students exhibit serious anxiety and

31. See, e.g., *Morris & Doherty, P.C. v. Lockwood*, 672 N.W.2d 884 (Mich.App. 2003) (contract for referral fee allegedly owed to a law professor held unenforceable because professor had switched bar membership to "inactive" status and therefore was not able to practice law).

32. Professor Thomas Morgan urged that, although most of our students do not aspire to become law professors, they "do want to live a professional life of which they can be proud. The effort to do that is something that law teachers model-for better or worse. The traits we hope they model have been called by some writers 'virtues.'" Thomas D. Morgan, *Law Faculty as Role Models*, 1997 ABA Sec. Legal Educ. & Admissions to the Bar 37, 38.

depression by the end of the first semester.³³ Also, most law professors know intuitively how attentive first year law students are. They attribute great knowledge and power to their teachers. Consequently they are more susceptible to harm by any abuse of the trust they place in their teachers.³⁴ Also, students are very reluctant to report misconduct because they fear adverse professional consequences.

Harm to colleagues, staff, and the law school community

The nature of the harm varies with the type of misconduct. However, anyone who has served on a faculty following an episode of misconduct by a member of the faculty can identify some of the harms. In some cases other faculty or staff members are the "targets" of the misconduct—the subject of deliberate false rumors, on the wrong end of temper tantrums, or the victims of sexual assault or sexual harassment. Very often law schools handle these incidents somewhat ineptly, tending to protect their own faculty. This angers anyone who was directly affected by the misconduct. It may divide the faculty. It may make some faculty or staff feel unsafe or alienated. **What should law schools do to prevent incidents of faculty misconduct and to remedy those that occur?**

Adopt standards of conduct

Although the law schools go to great lengths to set specific standards of conduct for students,³⁵ they have shown less interest in setting standards of conduct for professors. Sometimes allegations of misconduct are investigated by the relevant dean's office³⁶ or by the law faculty, but most schools have made no systematic effort to articulate standards of conduct for faculty. In 1989, the Association of American Law Schools adopted a set of model rules of conduct for law professors,³⁷ but relatively few law schools have adopted these standards.³⁸

33. See, e.g., G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225. See also Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 LEGAL WRITING 229, 229 (2002).

34. Lawrence S. Krieger & Kennon M. Sheldon, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI & L. 1, 1 (2004).

35. Most law schools have honor codes that govern their students and adjudicatory systems to investigate allegations of student misconduct. At some schools, a number of students are sanctioned every year for academic misconduct, such as cheating on exams or plagiarizing papers, and for other unprofessional behavior, such as omitting to disclose requested information on a law school application, misappropriation of law school funds, or assaulting another person.

36. See John E. Montgomery, *The Dean as a Crisis Manager*, 34 U. TOLEDO L. REV. 133 (2002).

37. AALS, Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities, <http://www.aals.org/ethic.html> (last visited October 4, 2004).

38. One exception is that Cornell Law School adopted some Standards for Professional Conduct within the Cornell Law School, which "suggest some of the contours of professional behavior for law students and faculty" such as avoidance of "epithets and ad hominem attacks" and showing respect and consideration for "the educational and professional aspirations of others." These guidelines are said to be "aspirational and are not intended to provide authority for the interpretation of . . . the Campus Code." These standards are reproduced at https://support.law.cornell.edu/students/forms/Standards_for_Professional_Conduct.pdf (last visited October 4, 2004).

Law professors are subject to rules of conduct established by universities, the bar, and the state. Many law school faculties are bound by standards of conduct set by their universities for faculty,³⁹ but these are seldom discussed and even less often enforced against law faculty. In recent years many universities have adopted specific policies restricting sexual contact between faculty and students; these policies get more attention than most others.⁴⁰ Most law professors are members of a bar and are therefore obliged to comply with the rules of professional conduct that apply to the other lawyers in the states where they have been admitted.⁴¹ However, these standards were written with an eye to the issues that arise in practice, not in academia. Still, the more general rules of professional conduct are relevant in a law school setting. The prohibition by most states of "dishonesty, fraud, deceit and misrepresentation" and the ethical ban on criminal behavior that "reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" apply to conduct in and out of practice. Many rules, however, exclude behavior not related to the representation of clients.⁴²

The adoption of standards of behavior will not itself solve these problems, but it is one way that a law faculty can articulate a standard of behavior—this puts some pressure on members of the faculty to curb inappropriate behavior. A law school dean might ask a committee to review the AALS model standards and to bring them to the faculty for adoption.

Do more careful screening when hiring faculty

There are very many cases of serious law professor misconduct that could have been prevented if the law schools had done more careful screening of a faculty candidate before making an offer.⁴³ Many law schools are so deeply concerned

39. Universities usually have rules of conduct for faculty; some law schools, however, are not attached to universities.

40. See Neal Hutchens, *The Legal Effect of College and University Policies Prohibiting Romantic Relationships Between Students and Professors*, 32 J.L. & EDUC. 411 (2003); Martha Chamallas, *Consent, Equality and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777 (1988).

41. Law professors are also (of course) bound to comply with criminal law and may be subject to liability for violation of other law.

42. For example, Model Rule of Professional Conduct 8.4, comment 5 states:

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

This comment excludes from the prohibition of the rules discriminatory behavior that occurs elsewhere than in the representation of a client.

43. Before he became dean at William Mitchell, Geoffrey Peters had served as Deputy Director of the National Center for State Courts in 1979. While there, several female employees made complaints that Peters had made unwanted sexual advances. One of the complaints was filed by Peters' secretary. When the secretary complained to other officials, "they told her she was whacko. They brought her in and told her they wanted her to leave but were willing to give her a good recommendation. . . . She left, changed her name and got psychological help." Dave Anderson, *Earlier sex harassment by law dean is alleged*, MINNEAPOLIS STAR AND TRIBUNE, NOV. 4, 1983. One wonders if the law school knew about this, and if so, whether those considering this dean candidate appreciated the potential for problems.

with a particular candidate's potential as a scholar that they may not consider carefully enough questions of character and fitness. The faculty hiring process is an exercise in courtship that should be tempered by a modicum of caution. Law schools should do a careful reference check on each potential hire, asking not only "Is he brilliant and productive?" but also some of the following questions:

- How would you characterize the candidate's interpersonal skills? Is he/she someone whom you would choose as a role model for a group of people whose professional education is entrusted to your care?
- Do you know whether the candidate has ever been arrested, convicted of a crime, disciplined by a school or employer, or otherwise been charged with improper conduct? (Independent verification of the candidate's criminal history should be sought.)
- Have you ever seen the candidate behave improperly toward any other person? Has he/she ever engaged in improper flirtation or made unwanted sexual advances toward another person? Has he/she ever thrown a "tantrum" or become unreasonably angry at a colleague or an employee?
- To your knowledge, does the candidate use illegal drugs? How much does the candidate drink? Have you ever seen him/her drunk?

These and other similar "nosy" questions are necessary to assist a law school in identifying a faculty candidate whose behavior may be problematic for students. To obtain candid answers to these questions, it may be necessary to call more references than those identified by the candidate. Some sources may be reluctant to provide answers to these questions for fear of potential liability. But diligent investigation may nevertheless produce important information. Reference-checking should be done with care (of course) to avoid disrupting the candidate's current employment situation. However, the importance of such inquiries cannot be underestimated. Although law students are adults, there is enormous potential for abuse of power in a teacher-student relationship.

It is ever so much easier not to hire someone whose behavior is a problem than it is to find a graceful (or even an ungraceful) exit plan for such a person. One useful point of reference in checking out a potential colleague would be to ask: "Would I be comfortable having my own child work as a research assistant for this person?"

Appoint an ombudsperson

Students and staff who are on the wrong end of any of the misconduct I have described above are often reluctant to come forward and fearful of retaliation if they report such misconduct. Every school should have one approachable person designated as the ombudsperson to whom such concerns should be directed. This person must be selected based on his or her perceived commitment to help in such situations. Also this person must have the trust and confidence of the dean, so that the concerns that come in will be addressed rather than disregarded.

Use external enforcement systems

It is often nearly impossible for a law faculty to deal effectively with a dis-

cipline problem involving a familiar colleague. Most universities have administrative systems to process grievances against faculty members. This route may be more effective than an internal adjudicatory process. Likewise, because nearly all law professors are members of the bar, the bar counsel's office may be better able to investigate and prosecute (at least certain types of) misconduct than the law school or the university. If the misconduct is a violation of an ethical rule that raises a substantial question as to the honesty, trustworthiness or fitness of the professor to practice law, then reporting to bar counsel is mandatory in most jurisdictions. Therefore even if the law school intends to pursue some internal or university process as to the misconduct, there may be an obligation to report to bar counsel as well. And finally, if the conduct alleged involves criminal behavior, it may be best to report the matter to the relevant prosecutor. If the conduct is likely to recur, this may be a necessary step. Also, if the conduct alleged is criminal and the matter is not reported to a prosecutor, the law school may appear to be seeking to protect one of its privileged own.

This essay is not by any means a comprehensive survey of the varieties of law professor misconduct that occur or of the relevant law or policy that may be useful in addressing this problem. My intention is to call attention to a problem. The types of conduct described above have profound consequences, yet law faculties tend to turn a blind eye to such behavior because it is so difficult to address problems of this sort. The interests of our students and of our profession require that we develop policies and processes within the law schools to prevent and to address instances of misconduct.

